

Judge Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

Defendants the Department of the Air Force (the “Air Force”), Robert M. Gates, the Secretary of Defense, Michael B. Donley the Secretary of the Air Force, and Colonel Janette Moore-Harbert, the commander of the 446th Aeromedical Evacuation Squadron, McChord Air Force Base, hereby answer plaintiff’s Complaint (Docket #1) in the following numbered paragraphs, which correspond to the Complaint’s numbered paragraphs.<sup>1</sup>

1. This paragraph contains plaintiff's characterization of this action, not factual allegations requiring a response.

2. This paragraph contains a legal conclusion, the basis for the Court's subject

<sup>1</sup> In this official-capacity action, the present office holders have been automatically substituted for their predecessors as defendants. *See Fed. R. Civ. P.* 25(d).

1 matter jurisdiction, to which no factual response is required.

2       3. This paragraph contains a legal conclusion, the basis for the Court's subject  
 3 matter jurisdiction, to which no factual response is required. To the extent that a factual response  
 4 is required, defendants deny that 28 U.S.C. § 1346 provides a basis for the Court's subject matter  
 5 jurisdiction.

6       4. Defendants deny the allegations in the first sentence of this paragraph. The  
 7 second sentence of this paragraph contains plaintiff's characterization of this action, not factual  
 8 allegations requiring a response.

9       5. Defendants deny the allegations in this paragraph, except to admit that the United  
 10 States Department of the Air Force is a military department of the United States of America.

11       6. Defendants deny the allegations in this paragraph.

12       7. Defendants deny the allegations in this paragraph. In this official-capacity action,  
 13 Robert M. Gates has been automatically substituted for Donald H. Rumsfeld in the office of  
 14 Secretary of Defense.

15       8. Defendants deny the allegations in this paragraph. In this official-capacity action,  
 16 Michael B. Donley has been automatically substituted for Michael W. Wynne in the office of  
 17 Secretary of the Air Force.

18       9. Defendants deny that Colonel Mary L. Walker is a defendant in this official-  
 19 capacity action; rather Colonel Janette Moore-Harbert has been automatically substituted for  
 20 Colonel Walker in the office of Commander, 446th Aeromedical Evacuation Squadron,  
 21 McChord, Air Force Base. Defendants deny the remaining allegations in this paragraph except to  
 22 admit that Colonel Walker was the Commander, 446th Aeromedical Evacuation Squadron,  
 23 McChord, Air Force Base, in November 2004, when administrative discharge proceedings  
 24 against plaintiff were initiated.

25       10. This paragraph contains a legal conclusion to which no factual response is  
 26 required.

27       11. This paragraph contains a legal conclusion to which no factual response is  
 28 required.

1       12. This paragraph contains a legal conclusion to which no factual response is  
 2 required. To the extent that a factual response is required, defendants deny that the selection  
 3 cited constitutes the only pertinent part of 10 U.S.C. § 654.

4       13. The first sentence of this paragraph contains a legal conclusion to which no  
 5 factual response is required. To the extent that a factual response is required, defendants deny  
 6 that the selection cited constitutes the complete text of Air Force Instruction (“AFI”) 36-3209 and  
 7 that the quoted text fully and accurately reflects the contents of AFI 36-3209 §§ 2.30-33.  
 8 Defendants deny the allegations contained in the second sentence of this paragraph.

9       14. This paragraph contains a legal conclusion to which no factual response is  
 10 required. To the extent that a factual response is required, defendants deny that the quoted text  
 11 fully and accurately reflects the contents of AFI 36-3209 § 4.17.5.

12       15. Defendants are without knowledge or information sufficient to form a belief as to  
 13 the allegations in this paragraph.

14       16. As to the allegations in the first sentence of this paragraph, defendants deny that  
 15 plaintiff entered the Air Force on March 27, 1987, but defendants admit that plaintiff attended  
 16 Military Indoctrination Medical Service Officers and that plaintiff was commissioned a Second  
 17 Lieutenant on April 11, 1989. Defendants admit the allegations in the second sentence of this  
 18 paragraph. Defendants deny the allegations in the third sentence of this paragraph.

19       17. Defendants admit that plaintiff’s initial duty assignment included the  
 20 responsibilities identified in this paragraph, but defendants deny that plaintiff held each of those  
 21 responsibilities simultaneously and for the entire duration of her first assignment.

22       18. Defendants admit the allegations in the first sentence of this paragraph.  
 23 Defendants deny the allegations in the second sentence of this paragraph except that defendants  
 24 (i) admit that plaintiff was transferred to Scott Air Force Base and that plaintiff served, at various  
 25 times and not necessarily simultaneously, as a flight nurse, nurse scheduler, flight nurse examiner  
 26 in either the 57th Aeromedical Evacuation Squadron or the 375th Aeromedical Evacuation  
 27 Squadron, and (ii) are without knowledge or information sufficient to form a belief as to whether  
 28 plaintiff actually served as a medical aircrew training officer. As to the allegations in the third

1 sentence of this paragraph, defendants admit that some Aeromedical Evacuation Squadron  
 2 personnel are responsible for in-flight management and care of ill and injured patients  
 3 transported by military aircraft, but deny that all Aeromedical Evacuation Squadron personnel  
 4 have those responsibilities.

5       19. Defendants deny the allegations in the first sentence of this paragraph except to  
 6 admit that plaintiff was discharged from active duty on December 15, 1995; that plaintiff  
 7 transferred into ready reserve status on December 16, 1995; and that plaintiff was reassigned to  
 8 the 446th Aeromedical Evacuation Squadron on March 18, 1996. Defendants deny the  
 9 allegations in the second sentence of this paragraph except that defendants admit that plaintiff  
 10 served, at various times and not necessarily simultaneously, as a flight nurse, flight nurse  
 11 examiner, officer in charge of weight management and physical fitness, officer in charge of  
 12 ground training, and the standards and evaluation flight commander. Defendants deny the  
 13 allegations in the third sentence of this paragraph.

14       20. Defendants deny the allegations in this paragraph except to admit that plaintiff  
 15 received the awards indicated (with the exception of the Air Force Training Medal).

16       21. Defendants admit the allegations in this paragraph except to deny the implication  
 17 that President George W. Bush personally presented an Air Medal to plaintiff.

18       22. Defendants admit that plaintiff received the award referenced in the first sentence  
 19 of this paragraph, but they deny that plaintiff fully and accurately characterized the basis for the  
 20 award, and instead defendants refer to the copy of the award for its full and accurate contents.  
 21 Defendants are without knowledge or information sufficient to form a belief as to the allegations  
 22 in the second sentence of this paragraph.

23       23. Defendants deny the allegations contained in the first sentence of this paragraph.  
 24 As to the allegations in the remainder of the paragraph, defendants admit that plaintiff's annual  
 25 review contained that identified language (except for the word "crated" in line 9).

26       24. Defendants are without knowledge or information sufficient to form a belief as to  
 27 the allegations in this paragraph except that defendants deny that Colonel Mary Walker remains a  
 28 defendant in this action.

1        25. Defendants are without knowledge or information sufficient to form a belief as to  
 2 the allegations in this paragraph.

3        26. Defendants are without knowledge or information sufficient to form a belief as to  
 4 the allegations in this paragraph.

5        27. Defendants admit the allegations contained in the first sentence of this paragraph.  
 6 Defendants deny the allegations in the second sentence of this paragraph to the extent that the  
 7 sentence suggests or implies that the civilian woman referenced in this second sentence is the  
 8 same civilian woman who is referenced in the first sentence of this paragraph; to the extent that  
 9 the civilian woman referenced in the second sentence of this paragraph is separate and distinct  
 10 from the civilian woman referenced in the first sentence of this paragraph, defendants admit the  
 11 allegations in the second sentence of this paragraph.

12        28. Defendants deny the allegations contained in the first three sentences of this  
 13 paragraph except to admit that plaintiff was informed that an administrative separation action  
 14 was being initiated against plaintiff for homosexual conduct under the provisions of AFI 36-  
 15 3209. Defendants admit the allegations contained in the fourth sentence of this paragraph.

16        29. As to the allegations in the first sentence of this paragraph, defendants deny that  
 17 plaintiff received the referenced certified mail on November 9, 2004, and defendants deny that  
 18 plaintiff's characterization of the memorandum fully and accurately reflects its contents and  
 19 instead refer to the copy of the letter for its full and accurate contents. Defendants admit the  
 20 allegations contained in the second sentence of this paragraph. Defendants deny the allegations  
 21 in the third sentence of this paragraph except to admit that plaintiff has not participated in any  
 22 pay or points activity for the Air Force Reserves after November 5, 2004.

23        30. Defendants deny that this paragraph fully and accurately reflects the contents of  
 24 the letter and instead refer to the copy of the letter for its full and accurate contents.

25        31. Defendants deny that the first sentence of this paragraph fully and accurately  
 26 reflects the contents of the document and instead refer to the copy of the document for its full and  
 27 accurate contents. Defendants admit the allegations in the second sentence of this paragraph.  
 28 Defendants deny the allegations in the third sentence of this paragraph and instead admit that

1 plaintiff's discharge hearing has been held at Robins Air Force Base in Georgia.

2 32. Defendants deny the allegations in this paragraph.

3 33. Defendants deny the allegations in this paragraph.

4 Defendants further deny that plaintiff is entitled to any relief whatsoever and deny any  
 5 and all allegations not specifically responded to herein.

#### AFFIRMATIVE DEFENSE

6 1. Plaintiff has waived and/or forfeited her ability to seek reinstatement based on  
 7 10 U.S.C. § 654(b)(1).

#### PRAYER FOR RELIEF

8 WHEREFORE, defendants pray that the Court dismiss plaintiff's suit with prejudice,  
 9 render judgment that plaintiff take nothing, assess costs against plaintiff, and award defendants  
 10 all other relief to which they are entitled.

11 Dated: October 23, 2009

12 Respectfully submitted,

13  
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2                   **CERTIFICATE OF SERVICE**

3       I hereby certify that on October 23, 2009, I electronically filed the foregoing Defendants'

4       Answer to Plaintiff's Complaint, with the Clerk of the Court using the CM/ECF system that I

5       understand will send notification of such filing to the following persons:

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15                   */s/ Peter J. Phipps*  
      

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20      *Attorney for Defendants*

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